IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

JUDGMENT

Likhmi Chand @ Laxmi Chand **VS.** The Manager Director,
The Ganganagar Central
Co-operative Bank Ltd.
Sri Ganganagar.

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.241/2003
against the judgment dated 7.1.2003 passed in
S.B. Civil Writ Petition No.2/1994.

Date of judgment : 30th August, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. M. Mridul, Senior Advocate assisted by
Mr. R.N. Upadhyay for the appellant.
Mr. D.C. Sharma for the respondents.

BY THE COURT:- (PER HON'BLE RAJESH BALIA J.)

This special appeal is directed against the judgment of learned Single Judge dated 7.1.2003 allowing the writ petition filed by the respondent –

Ganganagar Central Co-operative Bank Ltd., Sri Ganganagar for setting aside the award of the Judge, Labour Court, Bikaner.

The facts leading to this appeal are that the appellant was appointed by the Bank on 13th October, 1973 temporarily and the period of his service was extended from time to time until 31st March, 1977 but he absented from duty w.e.f. 28th March, 1977 before the extended period of his service came to an end. He thereafter reported on duty only on 28th September, 1983, almost after 6 and half years, and requested the management to take him on duty by submitting a certificate of sickness for this period. While the workman in his claim petition stated vaguely that he fell sick on 27th March, 1977 and submitted his sick certificate and also submitted further sick certificates from time to time, however, he had not stated exactly on what date/dates he submitted his applications. The respondent employer has clearly stated that the appellant had absented himself from duty w.e.f. 28th March, 1977 without submitting any application for

leave. In the circumstances, the respondent employer has taken the stand before the Labour Court, in response to claim of the workman when the reference was made to the Labour Court about the alleged illegal retrenchment of the workman, that since he had absented from duty w.e.f. 28th March, 1977, it was a case of abandonment of service. It was also stated that during this period the bank has also offered opportunity for giving regular appointment but the appellant did not appear before the Selection Authority on 24th August, 1979 the date fixed for that purpose and did not avail the opportunity of regular appointment during this period.

It was also pleaded that workman was employed temporarily upto 31st March, 1977 and he having voluntarily abandoned the services on 28th March, 1977 and thereafter being no extension of service, his services came to an end automatically.

The Labour Court did not accept the plea of abandonment inter alia on the ground that the employer

has not been able to prove that voluntarily abandonment of service by workman only because in respect of his employment no cross question was put to workman. It was also stated by learned Presiding Officer that even if it is accepted that workman has voluntarily left the job which amounted to a misconduct, an enquiry was required to be made before his services were terminated. The Labour Court also reasoned that even if the employer had doubted about the genuineness of the sick certificate from 28th March, 1977 to 5.5.1983 it was expected of him to have held an enquiry into the genuineness of those certificates by serving a memorandum of charge sheet in respect thereof but having not conducted any enquiry into those doubts, the termination of services was invalid.

The perusal of the award leaves no room of doubt that the learned Judge, Labour Court has raised many unfounded assumptions and credulously accepted ipse dixit of the claim without application of mind inasmuch as after noticing the rival claims and referring to non-holding an enquiry into the

genuineness of the sick certificate without even considering the case of abandonment and stark and undisputed circumstance appearing on the record that the workman has remained absent, on the ground of alleged sickness, for more than 6 years, the fact that he has left the job on 28th March, 1977 without making any application seeking leave particularly soon before period of his service was expiring on 31.3.1977. The fact which has not been noticed by the learned Judge, Labour Court that during the period when regular appointment was available in 1979 he did not avail even that opportunity. He failed to consider that once a person withdraws from appointment voluntarily by not appearing for almost six years, the question of holding an enquiry into the alleged misconduct, simply did not arise, as it becomes a case of voluntarily abandonment. The voluntarily abandonment of job does not amount to retrenchment. There appears to be no ground for accepting that voluntarily leaving of job would amount to misconduct for which punishment of termination ought to have been imposed after holding an inquiry. This question may have become relevant if the employee

would have resisted to any overt act to terminating the service by way of punishment. More particularly when period of offered appointment had expired on 31.3.1977 and the employee did not appear thereafter no presumption about continuity of service could have been raised. On the contrary the strong presumption is that the employee himself did not continue the employer-employee relationship thereafter. Apparently after five years in service and claiming that he be taken on duty, does not make him continuing on job. No person of ordinary prudence on the fact of present case could have drawn such an inference.

It was never the case of employer that the services of the workman was terminated because he has produced forged document about his health. The employer has simply stated that the circumstances in which he was justified in drawing the inference that the workman has voluntarily abandoned the job.

Taking into consideration all these facts, the learned Single Judge found the finding recorded by the

learned Labour Court perverse and set aside the award.

We are, therefore, of the opinion that facts speak for themselves. No interference is called for in the judgment of the learned Single Judge in setting aside the award by not accepting the finding so casually recorded by the learned Judge, Labour Court.

It may also be not out of place to mention here that in case it is assumed to be termination of service, when after six and half years the workman appears to take him on duty, on admitted facts about his continued sickness of over six years, such termination would not amount to retrenchment even in terms of Section 2 (oo) which was originally inserted in the Industrial Disputes Act, 1947. The termination of service which inter alia provides that the termination of service of workman on the ground of continued ill health is not included in the expression “retrenchment”.

If that be so, if the learned Labour Court was

justified in assuming that it amounted to termination of service when the appellant was refused to be taken on job, then in the circumstances, he ought to have also assumed that not taking of the job was due to admitted position that the workman was continuously suffering from sickness for more than six years and was not able to discharge his duties, if the case of the appellant is to be accepted on face value, in that event also the appellants case would not fall within the expression "retrenchment" as defined under Section 2(oo).

Be that as it may, we do not find any merit in the appeal in view of the aforementioned facts emerging from the record of the case which shows that the finding of learned Labour Court about invalid retrenchment is perverse and cannot be considered as binding.

It is stated at this stage by the learned counsel for the appellant that the workman has already been taken on duty in 1993 before the award was stayed by this Court and has since continued in service. We find from the averments made in the appeal that the

workman was taken on duty with effect from the award. The award was published on 29.12.1993 and he was paid wages w.e.f. 9th June, 1993 the date on which the award was passed by the Labour Court.

We further notice that in the writ petition challenging the award presented on 23.12.1993 just on the eve of winter break. In the circumstances, merely because during the pendency of the writ petition and keeping in view the provisions of Section 17-B, if the employer has given effect to the award by taking back the workman on duty can only be subjected to out come of the writ petition challenging the award preferred by the employer. It cannot be considered as conferring a right on the workman to the regularity of the employment de hors the out come of the writ petition. It is not a case where award has been challenged long after the same was implemented , giving rise to consideration that employer having accepted the award has chosen to challenge award as an afterthought.

Therefore, the reinstatement of workman in

pursuance of the award does not effect the merit of the case so as to sustain the award.

Lastly, it was prayed that since the workman has been reinstated on 29th Dec., 1993 and has been allowed to continue in service even after allowing the writ petition setting aside the award and there being no interim order in favour of the appellant, it must be assumed that the respondents are not willing to terminate the service of the workman unless they are forced to do.

We do not make any comment on it. If the employer wants to continue with the service of the workman in spite of invalidity of the award he is free to do so. However, his continuance in service cannot be treated in pursuance of the award, but can only be by way of fresh appointment conferring no consequential benefits of continuity of service and arrears of back wages.

This appeal is accordingly dismissed. No

order as to costs.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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